IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION No.1966 OF2005.

Mira Printers & Ors. **Petitioner**s.

Vs.

Mrs.Sushlila Prabhakar Khirid.
and Ors. **Respondents.**

Mr.M.T.Pise for the petitioner.
Mr.Sandeep S. Deshmukh for respondent no.1.
Mr. P.S. Hingorani A.P.P.for respondent no.2.

CORAM : S.R. DONGAONKAR, J.
DATE : MARCH 23, 2006.

P.C.

. Heard Shri. M.T. Pise,the learned counsel for the petitioner and Shri. Sandeep S.Deshmukh,the learned counsel for the respondent no.1.

. Rule.

. Shri.Sandeep S. Deshmukh waives service on behalf of respondent no.1.

. Heard finally.

. The petitioner seeks to challenge the order dated 12th July, 2005, passed by the learned 10th Judicial Magistrate, Pune below Exh.14 in S.T.C. No.10760/2004. The petitioner accused had filed application for the sending cheque in question for the opinion of

Handwriting Expert alongwith handwriting of accused before the court as per Section 73 of the Evidence Act. The learned Magistrate after hearing the parties, rejected that application by his impugned order.

. The learned Magistrate has observed in his order at Exh.24 that accused has admitted that the cheque in question bears his signature and rest of the portion is blank, shows that he has admitted his signature on the cheque and hence application filed by the accused stands rejected and further, accused is directed to proceed with the matter immediately.

. In his argument, the petitioner has taken exception relying on the observations of this Court in 1998 (2) Mh.L.J.p.28 [Arti Ramesh Vs. Ramesh], wherein it has been observed that directions in the matter of obtaining signature of accused for referring the same to the Government Handwriting Expert, can be given at the stage when the witnesses for complainant are being examined before framing charge. Hence there is no infringement of Article 20(3) of the Constitution.

. Reliance has been placed on the case reported in ALL MR (Cri) Journal, 105 [Avon

Organics, Hyd.Ltd. Vs. Pioneer Products Ltd. & Ors] in Criminal Application No.181 of 1999 4th July, 2003, wherein it has been observed that the cheque issued without mentioning the amount for which it is drawn is not a'cheque'at all. It is not a bill of exchange at all, as it is not drawn for a certain amount, when such is the thing, the question of invoking Section 138 of the Act does not arise.

. The learned counsel for the petitioner relying on these observations, contended that the learned Magistrate could have sent the cheque in question for the opinion of the hand-writing expert as desired by the accused.

. The learned counsel for the respondent no.1 while opposing this petition, contended that the petitioner/accused has admitted his signature on the cheque. Therefore, once the signature is admitted, presumption under Section 118 of the Negotible Instruments Act will be available.

. In my opinion, when the accused claims that the cheque was blank when it was issued, it has material bearing on the future of the case. When the accused himself offers that cheque should be referred to the hand-writing expert,

there should not have been any difficulty to the complainant/respondent no.1, because if the said hand-writing proved to be of the accused/petitioner, it will fortify the case of the complainant/respondent no.1.

. In my opinion, considering the provisions of Section 482 of Criminal Procedure Code, to meet the ends of justice, the order of the trial court needs to be set aside. Accordingly, it is set aside.

. The lower court is directed to take appropriate action on the application of the accused to obtain opinion of the hand-writing expert, as regards the contents of the cheque and its hand-writing at the costs of the accused.

. It is further directed that the proceeding of the Trial Court should not be delayed for want of report of hand-writing expert if it is not received maximum in six months.

. Petition is allowed, as above.

. Rule made absolute.